

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
CATER TURNER,) CASE NO. 02-62636 JPK
) Chapter 13
Debtor.)

ORDER CONCERNING MOTION TO DETERMINE
PAYOFF OF SECURED LOAN TO SN SERVICING ["MOTION"]

The debtor, by counsel, filed the Motion on January 19, 2010. The Motion asserts that SN Servicing is a creditor in the debtor's Chapter 13 case; that SN Servicing filed a proof of claim in the amount of \$49,006.15; that the Trustee has paid the creditor \$75,767.41 during the pendency of the bankruptcy case; and that the creditor asserts that a balance is still owed it by the debtor in the amount of \$19,000.00. The Motion concludes with a request that the court "determine the balance due the creditor and for all other relief in the premises".

Jurisdiction of a United States Bankruptcy Court is dependent upon the provisions of federal jurisdictional statutes. 28 U.S.C. § 1334(b) provides that "district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11". 28 U.S.C. § 157(a) provides that district courts may provide for exercise of their bankruptcy jurisdiction by United States Bankruptcy Courts, and the United States District Court for the Northern District of Indiana has so provided by means of N.D.Ind.L.R. 200.1. 28 U.S.C. § 157(b)(1) provides for final judgment authority of the United States Bankruptcy Court in "core proceedings arising under title 11, or arising in a case under title 11" if the United States District Court has so provided. Again, N.D.Ind.L.R. 200.1 provides the United States Bankruptcy Court for the Northern District of Indiana with this final judgment authority. However, final judgment authority cannot be granted to a United States Bankruptcy Court in a proceeding "related to a case under title 11"; rather, the United States Bankruptcy Court in this context acts as an initial recommendatory entity, with final judgment authority vested in the district court.

Finally, 28 U.S.C. § 157(b)(2) designates certain types of proceedings that are “core proceedings” over which a United States Bankruptcy Court may exercise final judgment authority.

The court need not determine at this stage whether or not the Motion invokes the court’s jurisdiction as “arising in a case under title 11” or with respect to a proceeding ‘related to a case under title 11”. It may be that the requested relief falls within the provisions of 28 U.S.C. § 157(b)(2)(A) or (O); perhaps not. It is clear, however, that the court does have some form of jurisdiction over the relief requested by the Motion. While the court believes that the parties and the administrative function of this court are better served by actions of the nature of the debtor’s being initiated in state court, the court will not initially decline the exercise of jurisdiction based on its preference in this regard.

The issue raised by the Motion thus does not involve the Court’s subject matter jurisdiction. Rather, it involves the procedural mechanisms by which the debtors must proceed.

The debtor seeks a determination by the Court of the amount due to SN Servicing. The debtor’s request is essentially a request to determine an account arising under the contractual arrangements between the debtor and the creditor. There is no provision in the Bankruptcy Code for this type of action.¹ The debtor’s action most nearly parallels an action for the common law remedy of an “accounting”, the origins of which are lost in the mists of time.²

State law may or may not be controlling with respect to the underlying nature of the remedy sought by the Motion, but it is at the very least instructive. In terms of Indiana law, the debtor’s assertions are in essence a request for the Court to undertake the equitable

¹ The Court eschews reliance upon 11 U.S.C. § 105(a) in this context.

² “Equitable jurisdiction for an accounting is usually invoked in cases where: (1) there is a fiduciary relationship between the parties, accompanied by a duty on the part of the defendant to render an account; (2) there are mutual accounts, or, if the account is all on one side, the account is complicated; and (3) there is a need for discovery. A court may also assume jurisdiction where other grounds for invoking equity, such as fraud, multiplicity of suite, and various other grounds, are present.” 1 Am.Jur.2d., Accounts and Accounting, § 54, p. 611 (1994).

determination of an "accounting"; See, *Denny v. Scoonover*, Ind. App. in Banc., 153 N.E. 779, 781 (1926); *Atwood v. Prairie Village, Inc.*, Ind. App. 401 N.E.2d 97, 100 (1980); *Anacomp, Inc. v. Wright*, Ind. App. 449 N.E.2d 610, 615-616 (1983); *rehrng den.*, (1983); *Lester v. Hinkle*, Ind. 141 N.E. 463 (1923). While the foregoing cases do not directly address the nature of the issue presented by the debtors to the Court, they are clear enough in their analytical underpinnings that the request made by the debtors invokes the equitable jurisdiction of the Court. That being so, the debtors' request falls within the provisions of Fed.R.Bankr.P. 7001(7) – "a proceeding to obtain . . . other equitable relief", i.e., an accounting as to the amount the debtor was required to pay or have paid to a creditor with respect to the debtor's obligation to that creditor. Because the debtor requests a determination as to the amount to be paid, rather than an accounting of the amount actually paid, the proceeding falls within the provisions of Fed.R.Bankr.P. 7001(9), as constituting "a proceeding to obtain a declaratory judgment relating to" "other equitable relief" under Fed.R.Bankr.P. 7001(7).³

The Court thus determines that it has jurisdiction with respect to the matter addressed by the Motion. However, the procedural mechanism employed by the debtor to present this matter to the Court is not correct: The matter must be presented by an adversary proceeding.

IT IS ORDERED that the Motion is denied, without prejudice to submission to the court of the controversy raised by the debtor in accordance with applicable law and procedures.

Dated at Hammond, Indiana on February 9, 2010.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor, Trustee, US Trustee

³ Apart from considerations of state law, a remedy for "an accounting" is an equitable remedy sanctioned by federal law in relation to matters before a federal court; *Bates v. Northwestern Human Services, Inc.*, 466 F. Supp.2d 69, 103-104 (D.C.D.C.C. 2006).